

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 8 December 2021

Public Authority: Department of Health and Social Care
Address: 39 Victoria Street
London
SW1H 0EU

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-96731-Y0C9, for a decision whether a request for information made by the complainant to the Department of Health and Social Care (DHSC) on 15 February 2021, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 15 February 2021 the complainant submitted a request to DHSC for the following information:

"Dear Department of Health and Social Care, I wish to see a full copy of the internal test and trace business case referred to in the article below:
https://www.huffingtonpost.co.uk/entry/test-and-trace-prevent-second-lockdown-secret-document_uk_60224ea8c5b6f38d06e6b370 "
3. DHSC responded on 15 March 2021, it refused to disclose the requested information under section 35(1)(a) FOIA.
4. The complainant requested an internal review on 16 March 2021. On 24 March 2021 DHSC provided the result of the internal review, it upheld its position.
5. On 10 September 2021 the Commissioner wrote to DHSC to obtain a copy of the withheld information and its submissions in relation to the application of section 35(1)(a) FOIA.
6. To date, the Commissioner has not received a substantive response from DHSC.

Information required

7. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the DHSC shall, within 30 days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - A copy of the withheld information.
 - Clarification as to exactly which government policy or policies DHSC considers this information relates to.
 - Explain when DHSC considers the formulation/development of the policy or policies to which this information relates to have been completed, or confirm why DHSC considers the formulation/development of this particular policy (or policies) to have been ongoing at the time the complainant submitted his request.

- If a decision in relation to the relevant policy has been taken, in line with the requirements of section 35(2), confirmation that any statistical information has not been withheld on the basis of section 35(1)(a).
- Arguments as to why DHSC believes the public interest in maintaining the exemption outweighs the public interest in disclosure.

Failure to comply

8. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

9. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@Justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

10. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed.....

Gemma Garvey
Senior Case Officer

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF